

REMARKS

This paper has been filed in response to the Notice of Non-Compliant Amendment mailed on February 18, 2009. That Notice identifies as non-compliant the deletions of text of five characters or less, where the deletions are marked with strike-through rather than using double brackets.

Applicants believe that the Notice is erroneous, in that those deletions were marked in a manner specifically authorized by 37 CFR § 1.121 (c)(2), quoted in the Notice:

(c)(2) When claim text with markings is required. All claims being currently amended in an amendment paper shall be presented in the claim listing, indicate a status of “currently amended,” and be submitted with markings to indicate the changes that have been made relative to the immediate prior version of the claims. The text of any added subject matter must be shown by underlining the added text. The text of any deleted matter must be shown by strike-through except that double brackets placed before and after the deleted characters *may* be used to show deletion of five or fewer consecutive characters. The text of any deleted subject matter *must* be shown by being placed within double brackets *if strike-through cannot be easily perceived*. Only claims having the status of “currently amended,” or “withdrawn” if also being amended, shall include markings. If a withdrawn claim is currently amended, its status in the claim listing may be identified as “withdrawn - currently amended” (emphases added).

MPEP § 714 IIc(B) provides the following comment on this provision:

The changes in any amended claim must be shown by strike-through (for deleted matter) or underlining (for added matter) with 2 exceptions: (1) for deletion of five or fewer consecutive characters, double brackets *may* be used (*e.g.*, [[error]]); (2) if strike-through cannot be easily perceived (*e.g.*, *deletion of number “4” or certain punctuation marks*), double brackets must be used (*e.g.*, [[4]]) (emphasis added).

Thus, double brackets are required if, for example, the deleted text consists of characters or

punctuation marks whose shape inherently make a strike-through imperceptible or nearly so, but is not required for all deletions of 5 characters or fewer. Applicants appreciate that the quoted passage from the MPEP gives “4” and “certain punctuation marks” only as examples, but at the same time reads this provision as meaning that an applicant is permitted to use a strike-through, even for just a single character, as long as the strike-through *can* be seen when superimposed on the character. Nonetheless, to eliminate this as an issue, Applicants submit herewith a substitute listing of the claims, adopting the manner of marking apparently preferred by the Examiner.

It is respectfully submitted that the Amendment filed on October 31, 2008, as supplemented by this Response, is in compliance with 37 C.F.R. §1.121.

No fee is believed to be due in connection with this Response. However, if a fee is required, the Commissioner is authorized to charge such fee to Deposit Account No. 06-1205.

Applicants’ undersigned attorney may be reached in our New York office by telephone at (212) 218-2100. All correspondence should continue to be directed to our address given below.

Respectfully submitted,

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